IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

S.B.CIVIL WRIT PETITION NO.4929/2002.

Ramesh Meena. **VERSUS** State of Raj. & Ors.

27.11.2006.

HON'BLE MR.JUSTICE DALIP SINGH

Mr.Mukesh Verma on behalf of
Mr.Virendra Agarwal, for the petitioner.
Mr.B.K.Sharma, Deputy Government Advocate.
Mr.Nitin Jain, for the respondents.

*****

This writ petition has been filed by the petitioner seeking compensation of Rs.10,00,000/- for the amputation of the right leg of the petitioner which as per the petitioner was amputated on account of the operation as a result of negligence of the treating Doctor employed by the State Government.

The respondents, in their reply, more particularly in paras 5 and 6 have disputed the claim of the petitioner so far as the medical negligence is concerned. The respondents have attributed the cause for amputation on the patient himself as per the averments in the said paragraphs. The petitioner, on the other hand, filed the rejoinder and challenged the stand taken by the respondents in their reply.

Since the writ petition involves disputed questions of fact, I am of the view that the same cannot be gone into in the writ jurisdiction under Article 226 of the Constitution of India. However, the petitioner would be

entitled to seek the remedy of filing a separate suit or other proceedings for the payment of compensation for the injury suffered on account of the medical negligence, as alleged by the petitioner. The time spent in pursuing this remedy may be considered for the condonation on account of pursuing a remedy in a wrong Forum.

Subject to the above, the writ petition stands disposed of. However, in case, the petitioner makes out a case even for the *ex-gratia* payment, it is expected that the State Government would consider his case for *ex-gratia* payment of compensation and award the same to the petitioner on account of rehabilitation and compensation for the amputation of the leg of a young child who shall have to suffer throughout his life and whose chances for employment have also been jeopardized. The respondents may also consider his case for employment in the reserved category of handicapped persons as per Rules.

(DALIP SINGH),J.

Solanki DS, Jr.P.A.